

**REMARKS**

In an office action dated 5 May 2004, the Examiner rejects claims 1-44 (all pending claims). In response to the office action, Applicants amend 1-4, 7, 11-14, 17, 21-24, 26-29, 35-38 and 41. Applicants also cancel claims 5, 6, 15-16, 25, 30-34, 39-40. Furthermore, Applicants respectfully traverse the rejections. Claims 1-4, 7-14, 17-24, 26-29, 35-38, and 41-44 remain in the application. In light of the amendments and following arguments, Applicants respectfully request that this application be allowed.

The Examiner rejects claim 1 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 4,918730 issued to Schulze (Schulze). To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Bariant, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The test for anticipation is symmetrical to the test for infringement and has been stated as: “That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983).

Amended claim 1 recites the limitation of creating a plurality of signatures wherein each of plurality of signatures is a signature of one of said plurality of segments and each of said plurality of signatures includes calculations of a plurality of acoustical features of said one of said plurality of segments selected from a group consisting of loudness, pitch, brightness, bandwidth, spectrum and MFCC coefficients. Shulze does not teach this limitation. Instead, Shulze teaches a system that generates envelopes of signals of a received work. The envelopes are a measurement of the loudness of the received signals that are compared to envelopes of a known work to determine a match. This method works fine for a minimal number of reference works. However, as the number of reference works increases, the use of one feature (loudness) may cause mismatches when there are a large number of references. The claimed invention uses a plurality of acoustical features which means at least two features are used to generate the signature.

Thus, amended claim 1 is not taught by Schulze. Therefore, Applicants respectfully request that the 35 U.S.C. §102(e) rejection be removed.

Applicants will also address U.S. patent number 6,542,869 issued to Foote (Foote) cited by the Examiner in a 35 U.S.C. §103 rejection of the dependent claims. The Foote reference teaches a method of generating signatures from windows of audio data. Foote does not teach generating a representative signature that may be stored for use in identification.

Furthermore, there is no motivation to combine Foote and Schulze. In order to combine references, the prior art must suggest the desirability of the combination. See MPEP §2143.01. See also In re Mills, 916 F2d. 680 (Fed. Cir. 1990). Furthermore, the purposed modifcation cannot change the principle of operation of a reference. See MPEP §2143.02. See also In re Ratti, 270 F2d. 810 (CCPA 1959). There is no motivation in the prior art to combine Foote and Schulze. Schulze uses one acoustical feature to determine matches of audio signals. Schulze operates perfectly well in this function. There is no need to use multiple features as recited in the claims and taught by Foote. The use of multiple features would change the mode of operation of Schulze. Thus, there is no motivation to combine. Therefore, a 35 U.S.C. §103 rejection based upon this combination is improper.

Claims 2-4 and 7-10 depend from claim 1. Thus claims 2-4 and 7-10 are allowable for at least the same reason as claim 1. Therefore, Applicants respectfully request that claims 2-4 and 7-10 be allowed.

Claim 11 recites a method for comparing the sampled works to known works that include the steps recited in amended claim 1. Thus, claim 11 is allowable for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejections of claim 11 be removed and claim 11 be allowed.

Claim 12-14 and 17-20 depend from claim 11. Thus claims 12-14 and 17-20 are allowable for at least the same reason as claim 11. Therefore, Applicants respectfully request that claims 12-14 and 17-20 be allowed.

Claim 21 recites an apparatus that performs the method of claim 1. Thus, claim 21 is allowable for at least the same reasons as claim 1. therefore, Applicants respectfully request that the rejections to claim 21 be removed and claim 21 be allowed.

Claim 22-24 and 26-29 depend from claim 21. Thus claims 22-24 and 26-29 are allowable for at least the same reason as claim 21. Therefore, Applicants respectfully request that claims 22-24 and 26-29 be allowed.

Claim 35 recites a machine readable device that stores instructions for performing claim 1. Thus, claim 35 is allowable for at least the same reasons as claim 1. Therefore, Applicants respectfully request that the rejections to claim 35 be removed and claim 35 be allowed.

Claims 36-38 and 41-44 depend from claim 35. Thus, claims 36-38 and 41-44 are allowable for at least the same reason as claim 35. Therefore, Applicants respectfully request that claims 36-38 and 41-44 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner is invited to telephone the undersigned at 775-586-9500.

Respectfully submitted,  
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